



Virginia
Regulatory
Town Hall

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Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Article 9, 9 VAC 5-80
Secondary action(s)	None
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Ozone Transport Region (Revision G04)
Document preparation date	October 7, 2004

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) (townhall.state.va.us/dpbpages/dpb_apa.htm), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act (leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100), the *Virginia Register Form, Style, and Procedure Manual* (legis.state.va.us/codecomm/register/download/styl8_95.rtf), and Executive Orders 21 (02) and 58 (99) (governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment..

Language has been added to indicate that sources in the Ozone Transport Region are subject to Article 9. The statement that areas located in the OTR are subject regardless of their nonattainment status has been added to emphasize this applicability as established by the federal Clean Air Act. A new section has been added to emphasize the portion of the rule directly affected by inclusion of the OTR: offset requirements for ozone nonattainment areas classified as moderate. The definition of major stationary source has been modified to include sources which emit or have the potential to emit 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the OTR. Finally, a definition of OTR has been added.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On September 29, 2004, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically (9 VAC 5 Chapter 80, Article 9). The regulation amendments are to be effective on December 1, 2004.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to conform to an order of the court or are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 c of the Administrative Process Act are available upon request.

On April 30, 2004 (69 FR 23951), EPA added a new subpart X to 40 CFR Part 51 as part of the phase-out of the 1-hour ozone standard. This subpart covers the implementation of the 8-hour ozone standard, including a new subsection 40 CFR 51.9005(e)(4) (iv) that requires that if an area is designated attainment or unclassifiable but is located in an Ozone Transport Region, the SIP must include provisions to implement, consistent with the requirements in § 184, the requirements of §§ 172(c) and 173 as if the area were classified as moderate nonattainment for the 8-hour ozone NAAQS. A definition of "Ozone Transport Region" was also added to the list of definitions found in 40 CFR 51.900.

The state regulations must be revised to be consistent with the federal regulations in order for the state to implement the nonattainment area new source review program; according to 40 CFR 51.160(a), "Each [state implementation plan] must set forth legally enforceable procedures that enable the state or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in-- (1) A violation of applicable portions of the control strategy; or (2) Interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state." Revising the nonattainment new source review regulations to be consistent with the new federal provisions for the 8-hour ozone standard is part of the legally enforceable means by which the state determines whether a new source will affect the NAAQS.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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